

U.S. ENVIRONMENTAL PROTECTION AGENCY
CAFO PUBLIC MEETING—AMES, IOWA
MARCH 7, 2001, 1:30 to 7:30 P.M.

On December 15, 2000, former U.S. Environmental Protection Agency (EPA) Administrator Carol Browner signed proposed revisions to the National Pollutant Discharge Elimination System (NPDES) Permit Regulations and the Effluent Limitation Guidelines and Standards (ELG) for Concentrated Animal Feeding Operations (CAFOs). The proposed revisions revise and update the two regulations that address impacts on water quality from manure and process waters generated by CAFOs. EPA published these proposed revisions in the *Federal Register* on January 12, 2001, at 66 FR 2959.

EPA held eight public information meetings in different cities across the country. The purpose of these meetings was to enhance public understanding of the proposed changes to regulations for CAFOs. At each meeting, EPA presented an overview of the proposed regulations and responded to questions and requests for clarification from attendees.

These informational meetings were not part of the public comment process. Any comments that citizens or groups wish EPA to consider as part of the rulemaking process must be submitted in accordance with the requirements specified in preamble to the proposed rule. The public comment period extends until July 30, 2001. In Ames, Geoff Grubbs and Janet Goodwin from the Office of Science and Technology, and Karen Metchis from the Office of Wastewater Management presented the overview of the proposed CAFO rule revisions.

The summary below is an overview of statements made by the public participants at the informational meeting. These notes are not intended to be a verbatim transcript or a comprehensive record of the meeting; rather, they are intended to identify the participants at this meeting, the issues of concern, and the general nature of the questions asked and the answers provided. The summary is organized by order of questioner.

MEETING SUMMARY

Presenters: Geoff Grubbs, Director, Office of Science and Technology, USEPA;
Karen Metchis, CAFO NPDES Rule Revision Project Leader, Office of Wastewater Management,
USEPA; Janet Goodwin, CAFO ELG Rule Revision Project Leader, Office of Science and Technology,
USEPA

Moderator: Mary Mindrup, USEPA Region 7

Panelists: Geoff Grubbs, Karen Metchis, Janet Goodwin, Gale Hunter (USEPA Region 7), and Ralph Summers (USEPA Region 7)

Approximate number of public participants: 650

Attendees: Meeting attendees were predominantly beef producers. There was some representation from hog producers and a limited number of poultry sector representatives. Attendees represented Iowa, Missouri, Nebraska, Kansas, Minnesota, and South Dakota.

Meeting opened: 1:30 P.M.

Questioning began: 2:20 P.M.

Meeting Adjourned: 7:30 P.M.

SUMMARY OF QUESTIONS AND ANSWERS
(By order of questioner)

The following are notes of this proceeding. EPA does not have a verbatim transcript of the proceeding.

1. Mark Venner, farmer

Q: Can an operation be considered a CAFO if some of the animals are housed in confinement and some are in open lots?

A: Both operations would be counted together to determine if the operation is a CAFO. However, if there are two different species present, these two species would not be added together to determine if the operation was a CAFO.

2. Mark Friedow, Spargo Company

Q: Why does the rule affect operations with more than 300 animal units (AU), and not operations with fewer than 300 AU?

A: Larger operations produce more manure and consequently have more potential for water quality impacts. EPA believes that focusing on operations that are 300 AU or larger and that have the greatest potential to impact water quality will provide the most environmental benefit with the least amount of regulation.

Q: How can we certify whether there is a connection between groundwater and surface water?

A: Questions about the hydrologic connection between groundwater and surface water should be addressed through a site-specific hydrologic assessment.

3. Jon Creig, beef feedlot operator, Iowa Cattleman's Association

Q: We currently have no phosphorus standards and need more guidance on application rates. Are you going to use a phosphorus index as a tool to determine land application rates for manure?

A: The states will be assisting in developing phosphorus application rates, standards, and indices specific to their regional conditions, which is based on the U.S. Department of Agriculture (USDA) 590 Standard.

Q: Are you going to require total containment of runoff water from beef operations and, is it possible to use other technologies? If so, how are we going to pay for this?

A: EPA is seeking comment on the proposed regulation and welcomes input on other ways to meet the goals of containing or otherwise managing manure runoff. EPA is discussing these issues with the states and is open to considering other economically achievable best available technologies (BATs).

4. Charlie Peters, family farm owner, member of Iowa Cattleman's Association

Q: Who is affected by the proposed co-permitting provision? Will custom feedyards, branded marketers, and production contractors be affected?

A: The co-permitting proposal was developed to address the vertical integration of the poultry and swine industries and was not intended to regulate entities that do not meet the size thresholds or do not exercise substantial control over the way animals are fed, raised, and medicated. EPA is open to input on how to further clarify and limit which entities would fall under the co-permitting provisions.

Q: My company is responsible for directing what happens to the cattle we raise, but we do not own them. Would we be responsible for obtaining permits for our cattle operations?

A: EPA did not intend to extend co-permitting to smaller operations that do not exercise substantial control over production. Additional input on how to differentiate among these type operations would be appreciated.

Q: Why is co-permitting being proposed?

A: EPA is aware of the increase in the number of operations with only animals and no crop land for manure application. The co-permitting provision is being proposed to promote the need for proper manure management and the sharing of responsibility among producers and other entities that exercise substantial control over production operations.

5. Vince Hassebrook, owner of a small farrow to finisher swine operation

Q: Why do our government agencies continue to pursue the goal of central government planning when the Soviet Union and Cuba have proven it doesn't work?

A: The Clean Water Act (CWA) requires EPA to establish performance standards for CAFOs. The Agency is not prescribing technologies. EPA wants to allow flexibility for local governments to develop local solutions.

6. John Lorwa, cattle feeder

Q: Can a small animal feeding operation (AFO) be considered a CAFO if it is located in an impaired watershed?

A: An operation must meet the size and other regulatory definitions in order to be considered a CAFO, or it could be considered a CAFO if the NPDES director designates it as such.

Q: The pursuit of clean water may cause some producers to go out of business.

A: The Clean Water Act requires that BATs must be economically achievable. EPA is trying to ensure that economic impacts are not unreasonable and that standards are not unattainable.

7. Beth Dovan, beef specialist, Iowa State University

Q: Are you working with USDA to develop assistance and incentive programs, such as cost-share programs?

A: The analyses conducted so far by EPA assumed that the producer would absorb all of the costs of compliance. EPA agrees that more cost-share funding is needed, and the agency is reviewing opportunities that might be available through the farm bill or the State Revolving Fund (SRF).

Q: How does EPA propose to handle the overload of work created by the regulations, specifically the demand for agricultural engineers and certified nutrient management planners?

A: Elements of the proposed regulation are comparable to practices followed under existing programs. For example, provisions of the nutrient management plan correspond to the USDA Natural Resource Conservation Service (NRCS) comprehensive nutrient management plan (CNMP) approach. EPA is working with USDA to address staffing issues during the current period between the regulation proposal and final enactment. The private sector also will likely meet some of the needs in this area.

8. Jim Venner, livestock producer

Q: We need a better definition of zero discharge.

A: For beef and dairy operations, zero discharge means containment of all stormwater runoff from the production area. EPA is looking for comments and other input on design standards for containment systems.

9. Steve Veysey, H.F.F.A

Q: Will the proposed regulations protect the environment and lead to clean water? I do not see any move toward protecting “special places” in the proposal. Will existing Iowa hog animal feeding operations (AFOs) with 1,000 AU be regulated in 2003 or be listed as new AFOs and be regulated in 2006?

A: The CWA includes technology-based controls and water quality-based controls to protect water resources. This rule is focused on technology controls rather than on water quality, though it is expected that water quality will improve under the proposal. As for existing hog operations, they will be expected to apply for permits and comply with the regulations by 2003.

10. Rob Dobson, S.E.S, Inc.

Q: Would open-top lagoons be allowable under proposed ELG Option 5?

A: It might be possible to construct a two-celled system, with the first cell operated as an anaerobic lagoon.

Q: Would EPA allow one-celled lagoon systems?

A: It might be possible; EPA would be interested in any suggestions regarding design standards.

11. Charlie Van Meter, feedlot operator

Q: If stormwater runs off the feedlot of an operation with more than 1,000 AU and is treated by a vegetative filter strip, is it considered a point source?

A: Under the proposed rule and the existing rule, except for the 25-year, 24-hour rain event, feedlots cannot discharge wastewater. All operations that are CAFOs would require containment systems.

Q: Does the definition of discharge include any fluid?

A: If water does not come into contact with the production area, the feed storage area, or onsite manure, it can be discharged and is not considered process wastewater.

12. Troy Bredenkamp, Nebraska Cattleman’s Association

Q: Is EPA ready to take responsibility for the acceleration of the concentration of CAFOs? Has EPA completed a cost-benefit analysis for the rule, and has the agency considered the number of producers that will be forced out of production?

A: EPA has completed a cost-benefit analysis for the rule and has acknowledged that there will be operations that experience a severe financial stress. It is estimated that 3,080 farms will be affected [forced out of production] by the proposed requirements. However, there will be a lot of variability because these analyses can only approximate actual impacts.

Q: Why was the financial data from the Beef Cattleman’s Association not submitted to EPA for the cost-benefit analysis?

A: EPA collected and used data from a number of sources in the analyses conducted for the proposed rule, including state and USDA data. For example, data from Nebraska were used to verify USDA data.

13. Jon Burgers, Director of Rock County Land Management Office

Q: In the clean water report that mentions agriculture as contributing to water quality problems, what part of “60 percent of impaired waters” is from agriculture?

A: That is difficult to answer because states have not historically monitored or assessed all their waters. It is difficult to estimate the portion of water quality impairment believed to originate from agricultural operations.

Q: If wastewater is not discharged into the waters of the state, would a CAFO be subject to the absolute zero discharge rule?

A: Under the regulation as proposed, all CAFOs meeting the size threshold and other requirements would be subject to the proposed containment provisions.

14. Jim Christensen, farmer

Q: Can there be an extension of time to develop other BATs and incorporate them into this rule?

A: EPA is under a court order to have the regulation finalized by December 2002.

15. Dean Black

Q: If I allow feedlot cattle to forage in an adjacent corn stubble field for approximately 60 to 70 days during the winter, and periodically deliver feed to these animals, would the adjacent field be considered part of the confinement system, and would I be required to contain the runoff from this field?

A: As the proposal exists now, the adjacent area would be considered part of the CAFO. The keys are the number of animals in this confinement area and the amount of vegetative cover in the adjacent field. However, EPA has not considered these types of situations specifically and would welcome input on how to define and address these situations.

Q: As part of the vegetative cover requirement, would I be required to grow vegetation all year?

A: The vegetative cover language was written with the intention of excluding pasture areas or areas that have small patches of denuded area. EPA is not trying to expand that definition. If a producer has a grazing operation with forage, that area is not considered part of a CAFO.

Q: If I run my cattle in a field where there is no forage during the winter, would I still be required to contain all of the runoff from that field?

A: Again, EPA would like to receive some input on this issue to clarify the proposal.

16. Paul Herberger

Q: I graze cattle during the year and have to feed them during the winter. Is my operation defined as a CAFO, and will I need a permit?

A: The existing regulations define CAFOs as operations where animals are confined for more than 45 days. Operations that graze during the summer months and confine animals for more than 45 days over the winter would be considered CAFOs and would need a permit.

17. Bernie Punt, feedlot operator

Q: Why do we have to have a zero discharge permit?

A: Discharges of storm water contaminated with manure are not allowable under current law. EPA is required to address this issue under the Clean Water Act. Zero discharge is the most economically achievable technology for these operations.

Q: How much can a publicly owned treatment works (POTW) be permitted to discharge?

A: POTWs also are regulated under the Clean Water Act, and are required to meet certain effluent limitations and other requirements in order to receive a permit. Municipalities must monitor the condition of the discharge and report regularly to keep their permits.

18. Leslie Holloway, Missouri Farm Bureau

Q: Please address the discrepancies between the proposed rule and the *USDA–EPA Unified National Strategy for AFOs* concerning the number of farms to be regulated?

A: The 5 percent figure from the *USDA–EPA Unified National Strategy for AFOs* was an estimation of the number of operations to be regulated. The number of operations to be regulated under the proposed rule is the result of EPA's analysis using available data.

19. Brian Pickard, feedlot operator

Q: Can we dilute our manure and then discharge?

A: EPA will work with Region 7 states to identify alternatives to the zero discharge for operations with more than 1,000 AU. However, all operations will still be required to eliminate or minimize pollutant discharges.

20. William Uttesch, Triplou Ranch

Q: Why does EPA require feedlots to have total containment but allow POTWs are allowed to discharge?

A: All discharges are regulated under the CWA, including storm water discharges from cities. EPA is currently writing effluent guidelines for stormwater dischargers. All discharges must have permits that control pollutants and protect water quality.

21. Kent Pruisman, cattle feedlot operator

Q: Explain the logic for issuing a permit to an industry that discharges into a stream, but requiring CAFOs to have total containment and zero discharge?

A: Discharge permits are used to control pollutant concentrations in the effluent and are enforceable. EPA's analysis has indicated that zero discharge is more economically achievable than allowing a discharge with a specific effluent limit that would require a treatment technology to meet the limit.

Q: We cannot pass the cost of compliance on to the consumer or the public.

A: EPA realizes that compliance costs for some will be significant. However, in conducting the analyses for this rule, EPA did not consider the possible availability of cost share funding, which should help.

22. John Fluit

Q: Did anyone (on the panel) take an economics class? Are there any economists at EPA?

A: [No answer.]

23. Peggy Murdock, environmentalist

Q: What is EPA doing to educate the people on the detrimental effects of agriculture on the environment?

A: EPA conducts many educational, technical assistance, and other programs that address the impact of agriculture on the environment and on water quality. The preamble of the proposal notes the types of pollutants generated by and discharged from CAFOs and their effects on the environment.

24. Alan Zellmer, feedlot farmer

Q: How can I comply with the rules when there isn't enough technical help to meet the deadline?

A: Assistance is available from the state natural resource agencies, extension services, and other agencies. EPA acknowledges that more assistance will be required, and is working with other state and federal agencies to address these needs.

25. Alan Albright

Q: How much cleaner will the water be after this regulation goes into effect?

A: It is difficult to estimate, but EPA projects that the proposed rule will reduce pollutant discharges to the nation's waters and will result in benefits estimated at \$180 to \$200 million to the nation as a whole.

26. Tom Johnson, Feedlot Operator, Midwest Farmers Co-op

Q: Is Congress prepared to provide financial assistance to support the new rule and help farmers stay in business? What do we have to do to extend the time limit?

A: EPA has not discussed with Congress any proposal to extend the comment deadline or address other issues related to the regulation. EPA is aware of some discussions in Congress concerning the extension of the comment period. The extension of the comment period and other decisions concerning the proposed CAFO rule will be addressed by the new EPA Administrator. Requests to extend the comment deadline should be submitted via the formal comment process.

27. Doug Ritter, cow/calf operation

Q: Are these rules and regulations going to help?

A: EPA has projected a number of benefits from the proposed rule, but again it is difficult to estimate precisely what the overall impact will be.

28. Joel Hartman, beef cattle operation

Q: Is there anything in the CWA to promote the development of regional alternatives to the CAFO threshold, zero discharge, and total containment provisions? Can they be defined by the states?

A: EPA has registered the concerns that were mentioned today regarding these issues. The agency will continue to request and gather input on how these concerns can be addressed within the CWA and the court order the agency is under.

Q: Are the performance standards going to be process-oriented or numeric?

A: The law states that performance standards have to be quantifiable, but this issue is being discussed in the courts and a final decision is still pending.

29. Jim Pellet, president of Iowa Cattle Association

Q: Can you quantify the environmental benefit resulting from the increased cost in record keeping and bureaucracy?

A: EPA is aware of the increased reporting and recordkeeping requirements related to the proposal under consideration. Overall, the estimated costs are \$800 to \$900 million, while the estimated quantified benefits are \$180 to 200 million.

30. Nancy Robinson, Livestock Marketing Association

Q: Why did you decide to address CAFO impacts through a proposed regulation?

A: EPA is under a court order to address CAFO impacts under the approach specified in the CWA.

Q: How does this proposal affect auction markets, which operate only one day a week throughout the year, thus meeting the 45-day confinement requirement during a 12-month period, when they feed and water and house the livestock for only one day each week?

A: Under the proposed regulation, operations that meet the size and other definitions of a CAFO would be considered a CAFO and would be subject to the new rules.

31. Chris Peterson, swine producer, Farmers Union

Q: What can be done to help the smaller farmer comply with the proposed regulation?

A: EPA is working with states, NRCS, and other agencies and organizations to develop additional assistance programs.

32. Mike Lowsky, lawyer representing swine producers

Q: Do you think it is correct to conclude that AFOs, which comprise a small percentage of facilities that discharge nationwide, are responsible for significant amounts of water quality impairments?

A: Pollution comes from multiple sources, including AFOs and CAFOs. The information EPA reviewed suggests that livestock operations can constitute a significant source of various pollutants in receiving waters.

Q: What is the rationale for eliminating the 25-year, 24-hour storm event permit exemption? It seems that EPA is assuming that all CAFOs will eventually discharge.

A: The existing rule has been difficult to implement, due partly to the exemption. EPA is hoping to clarify which facilities fall under the regulations and what the performance standards are with the proposal under review.

35. Kevin Carstensen, Bar V Feedlot

Q: Why the May 14 deadline?

A: 60 days is the standard comment period for a proposed rule; EPA has elected to provide a 120-day comment period for this proposed rule.

Q: Whom might we lobby to get the comment period extended?

A: Comments regarding an extension should be directed to the EPA administrator.

Q: Do you feel that adding 5,000 to 10,000 lagoons to achieve total containment is what the public would like to see?

A: EPA is not certain what would be publicly acceptable in each locality. In compliance with the court order, EPA has attempted to determine BATs that are economically achievable.

34. Steve Hoffman, egg layer representative, S&R Egg Farm

Q: What are the thresholds to be listed on the 303(d) list? How were they determined? Can these limits be achieved by this regulation?

A: The CWA outlines the process states must go through for listing waters under Section 303(d). Both listing and de-listing require statutory and regulatory processes, monitoring and assessment, and opportunities for public input.

Q: Whom are we trying to please with this regulation? Where was the science developed for the phosphorus?

A: EPA has worked with states, USDA, and land grant universities to develop the science on nutrient impacts.

Q: Is there language that phosphorus application levels could be an environmental number and not an economic number?

A: Please elaborate your question and concerns in a written comment. EPA is required to consider economic impacts under the Clean Water Act.

Q: Who is funding the enforcement of the new regulations?

A: Funding for state programs has been substantially increased over the past 4 years, with increased funding levels authorized by Congress.

Q: Is there any encouragement from the states to make the legislation more strict?

A: EPA is receiving comments on the proposed rule from various states.

35. Lucille Andersen, farmer

Q: What could happen to make operations with less than 300 AU be classified as a CAFO? What are the pitfalls? Technicalities?

A: The state NPDES program director could designate any operation a CAFO with sufficient justification, which includes significant impacts on water quality.

Q: Could complaints from neighbors result in a CAFO being designated?

A: The permitting authority would have to determine that the farm is a significant contributor of pollutants, the decision would not be solely based on complaints.

36. Craig Uttesch

Q: Are there any data out there showing that diversions work?

A: EPA is not aware of any data showing that diversions work better than containment.

37. Ken Schemberger

Q: Do we have to provide an impermeable surface for temporary manure piles that are moved annually?

A: Probably not; EPA intended to address permanent manure storage structures under the proposal.

38. Harry Jensise, Minnesota feedlot inspector

Q: Are there any regulations controlling the amount of phosphorus or nitrogen applied in commercial fertilizers?

A: EPA does not have the authority under the CWA to regulate commercial fertilizers.

39. Jim Smith, feedlot operator

Q: Is it fair to be inspected by the Iowa Department of Natural Resources (IADNR) and be found in compliance but then be found in violation by USEPA and fined?

A: IADNR is currently working on an amnesty program, and EPA has agreed to hold off on inspections until April 1. The inspections resulted from past complaints, violations, and discharges. EPA has supported state actions to speed up compliance with the requirements of the CWA.

Q: It seems that operations that went out and got permits became the subject of inspections. Is this fair?

A: EPA looked at both permitted and non-permitted facilities to determine which operations might be inspected. Permitted facilities were inspected first. Non-permitted facilities also will be inspected.

Q: Non-permitted facilities will now have amnesty from EPA. Is this fair to the people that were already fined and had a permit?

A: EPA agrees that there is an issue.

Q: Are we to listen to IADNR or USEPA?

A: Producers need to listen to both, but both agencies are on same page.

40. Don Wagner

Q: How far apart can feedlots be located without being defined as a CAFO?

A: There are no set minimum specifications. EPA would like to receive input on this and other issues.

41. Howard Mogler, Iowa Cattleman's Association

Q: Why must an inside operation be combined with an outside operation for the purposes of determining whether or not it is a CAFO?

A: EPA will review this issue; again, suggestions to help clarify this would be appreciated.

42. Dennis Brown

Q: Does my hog confinement operation get added to my dairy confinement operation to determine if the total operation is defined as a CAFO?

A: If you have two different species, they are not added together to determine if an operation is a CAFO. Only one species is counted to determine if the operation is a CAFO.